

IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1939.

Nos. 15 and 16

L. BOTELEK, Trustee of the Estate of RICHMAID CREAMERIES, INC.,
a corporation, Debtor,

Petitioner,

vs.

RAY INGELS, Director of Motor Vehicles of the State of California,
HOWARD E. DEEMS, as Registrar of Motor Vehicles of the State
of California, and the MOTOR VEHICLE DEPARTMENT OF THE
STATE OF CALIFORNIA,

Respondents.

L. BOTELEK, Trustee of the Estate of RICHMAID CREAMERIES, INC.,
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RAY INGELS, Director of Motor Vehicles of the State of California,
and HOWARD E. DEEMS, as Registrar of Motor Vehicles of the
State of California,

Respondents.

PETITION FOR REHEARING.

RAPHAEL DECHTER,

633 Subway Terminal Bldg., Los Angeles,

Counsel for Petitioner.

Of Counsel:

THOMAS S. TOBIN,

JOSEPH J. RIFKIND,

DAVID SCHWARTZ.

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State of California;

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PETITION FOR REHEARING.

*To the Honorable Justices of the Supreme Court of the
United States:*

Comes now L. Boteler, Trustee of the Estate of Rich-
maid Creameries, Inc., Bankrupt, and petitioner herein,
and presents this his petition for a rehearing of the deci-
sion of the above Honorable Court rendered November 6,

1939, in the above-entitled matter, and in support thereof, respectfully shows:

I.

That said memorandum of decision of the above court should be modified by striking the word "only" from page 3, line 7, after the words "First. Subdivision 57(j)" so that the same shall read: "First. Subdivision 57(j) prohibits". As said decision reads at the present time it might be construed as limiting the effect of 57(j) to tax penalties only, and not to penalties in general. Section 57(j) applies to penalties and forfeitures of every kind and character. See *United States v. Birmingham Trust Co.*, 258 Fed. 562.

II.

The decision of the above court fails to give any application or distinction to the fact that the word "debts" is used in Section 57(j), whereas throughout Section 57 the word "claims" is used. Debt is defined by Webster's New International Dictionary, Second Edition, Unabridged, as follows:

"1. That which is due from one person to another, whether money, goods or services; that which one person is bound to pay to another, or to perform for his benefit; a thing owed; an obligation or liability."

The Bankruptcy Act indicates that the word "debt" is of broader scope and comprehension than the word "claim". See Section 1, subdivision 11, and subdivision 14 of the Bankruptcy Act.

III.

The decision of the above court fails to give effect and distinction to the fact that under the Bankruptcy Act, as it existed at the time of the filing of the petition in bankruptcy in the above matter, to-wit, September, 1936, taxes were not required to be filed as claims under the Bankruptcy Act, but were required to be paid by the Trustee under Section 64 of the Bankruptcy Act whether claims were filed or not. See *In re William F. Fisher & Company*, 148 Fed. 907; *In re Ashland Emery & Corundum Co.*, 229 Fed. 829; *Stwarts v. Hamner*, 194 U. S. 441; U. S. Codes 64, Title 11, page 7, Sec. 104; *In re Standard Composition* 23 Fed. Supp. 391 at 395.

IV.

The court erred in its decision in stating:

“and Section 57(a) makes clear that Section 57 as a whole relates only to claims justly owing from the Bankrupt to the creditor”

for the reason that Section 64, subdivision 4, of the same Bankruptcy Act likewise provides:

“taxes legally due and owing by the Bankrupt to the United States or any state or subdivision thereof”

and prior to the present Bankruptcy Act of 1938, Section 64(a) provided

“the court shall order the Trustee to pay all taxes legally due and owing by the Bankrupt to the United States, state, etc.”

and under the decisions it has been uniformly held that while Section 64 does not in express words refer to taxes assessed or becoming due after the institution of the bank-

ruptcy proceedings, that Section 64 nevertheless applies to taxes both before and after the filing of the petition, and therefore it should be considered in the light of the ordinary rule of statutory interpretation that when Congress readopted Section 64 they did so in the light of the decisions theretofore construing the same.

See:

Missouri v. Ross, 299 U. S. 72, 81 L. Ed. 46;

In re William F. Fisher & Company, *supra*;

In re Ashland Emery & Corundum Co., *supra*;

Remington on Bankruptcy, Vol. 6, Sec. 2808, p. 405.

In re Denver & R. G. W. R. Co., 27 Fed. Supp.

It has been held that while Section 64 requires a Trustee to pay taxes accruing both before and after the filing of a bankruptcy petition, there is no requirement on the part of a Trustee to pay penalties. Therefore, in the case of taxes accruing after the bankruptcy proceedings have been commenced, the Trustee has been required to pay only taxes plus interest at the usual legal rate prevalent in the state.

Swarts v. Hammer, 194 U. S. 441, 48 L. Ed. 1060, 24 Sup. Ct. 695;

Stanard v. Dayton, 241 U. S. 588, 60 L. Ed. 1190, 36 Sup. Ct. 395.

See also *In re Ashland Emery & Corundum Co.*, 229 Fed. 829, wherein the court said:

"Section 64a contains no provision for the payment of penalties; and I do not think it can fairly be construed to include them especially when, as here, the estate was in the course of administration during the entire period when they accrued."

V.

The decision of the above court should be clarified so as to specifically not confuse the courts in matters hereafter coming before them by stating that in arriving at the decision in this case no rule or decision is being made as to the respective rights of a Trustee in Bankruptcy and of a taxing body, where a bankruptcy estate is being administered in the ordinary course of liquidation and where a Trustee is not operating a business. Or, this court should, once and for all, settle the question by announcing what this court has heretofore announced, that debts only for just and adequate claims should be allowed and that therefore penalties for taxes or for any other debt accruing against the bankrupt estate in the ordinary course of liquidation and not where a Trustee is operating a business, should not be allowed. Penalties, as this court in its decision said, and as it has heretofore stated, are imposed as a means of coercion to compel payment. If the reason for such rule does not exist, the rule itself should cease. The same reason for disallowing penalties against the bankrupt estate or taxes accruing before bankruptcy, applies just as forcibly after bankruptcy for the reason that until liquidation is completed the Trustee, like the Bankrupt, is without funds to meet obligations as they mature:

See:

Kuehner v. Irving Trust Co., 229 U. S. 445;

Kothe v. Taylor Trust, 280 U. S. 224;

New Jersey v. Pressed Steel Car Co., 100 Fed. (2d) 147;

In re Ashland Emery & Corundum Co., 229 Fed. 829, at 831;.

In re Reimer & R. G. W. R. Co., 27 Fed. Supp. 983.

In re Standard Composition Co., 23 Fed. Supp.
391, at 395;

Gilbert's Collier on Bankruptcy, 4th Ed., Sec. 1064,
p. 783;

In re Messenger's Merchants Lunch Rooms, Inc.,
85 Fed. (2d) 1002.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the judgment of this Honorable Court be, upon further consideration, reversed or modified in accordance with the within petition.

Respectfully submitted,

RAPHAEL DECHTER,
Counsel for Petitioner.

Of Counsel:

THOMAS S. TOBIN,
JOSEPH J. RIFKIND,
DAVID SCHWARTZ.

Certificate of Counsel.

I,, one of the counsel for the above-named petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

.....
Counsel for the Petitioner.

SUPREME COURT OF THE UNITED STATES.

Nos. 15, 16.—OCTOBER TERM, 1939.

L. Boteler, Trustee of the Estate of
Richmaid Creameries, Inc., a cor-
poration, Debtor, Petitioner,

15 vs.

Ray Ingels, Director of Motor Vehicles
of the State of California; Howard
E. Deems, as Registrar of Motor Ve-
hicles of the State of California, and
the Motor Vehicle Department of the
State of California.

L. Boteler, Trustee of Richmaid Cream-
eries, Inc., a corporation, Debtor,
Petitioner,

16 vs.

Ray Ingels, Director of Motor Vehicles
of the State of California, and How-
ard E. Deems as Registrar of Motor
Vehicles of the State of California.

On Writs of Certiorari to
the United States Circuit
Court of Appeals for the
Ninth Circuit.

[November 6, 1939.]

Mr. Justice BLACK delivered the opinion of the Court.

Under California law vehicle license and registration fees are due the State on January first of each year; they become delinquent when a vehicle is operated without registration and license; if the fees are not paid within thirty days after delinquency a penalty equal to the fees accrues; fees and penalties are protected by statutory lien on the vehicle from the due date.¹

The single question presented is sufficiently stated by the petition for certiorari:

"Is a bankrupt's estate liable to penalties imposed by State statutes for non-payment of automobile license fees where license fees

¹ c. 362, Calif. Stat. of 1935, p. 1313, as amended. c. 27, Calif. Stat. of 1935, Calif. Vehicle Code, pp. 147, 150, 151.

and penalties claims accrued during operations for purposes of liquidation of the business of bankrupt's estate by the Trustee in Bankruptcy¹

As trustees of a business in bankruptcy, petitioner and his predecessor continuously operated unregistered and unlicensed vehicles on California highways, from January first to February twenty-seventh. Tender of fees without accrued penalties was rejected by California. Upon petition of the trustee, the referee in bankruptcy ordered the vehicles sold free and clear of any claims or liens of the State but permitted California to file claims for fees, without penalties, within thirty days or be forever barred. The referee's order was confirmed by the District Court which also directed California officials (respondents here) to issue licenses to the trustee. The Circuit Court of Appeals reversed, ordering alternatively that accrued fees and penalties be paid, or that the vehicles be disposed of subject to the lien of the State for the unpaid taxes and penalties.² Because of asserted conflict with the Court of Appeals for the Seventh Circuit,³ we granted certiorari.

The trustee insists that the State is barred from collecting the penalties because of subdivision 57(j) of the Bankruptcy Act⁴ which provides:

"Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."⁵

Recognizing that 57(j) prohibits allowance of tax penalties accruing prior to bankruptcy⁶, the State nevertheless insists that this subdivision does not exempt the trustee from State laws applicable to the business he operates after bankruptcy. California considers the trustee subject to the requirements and penalties of its license and registration laws under an Act of Congress of June 18, 1934, 48 Stat. 993, reading in part as follows:

² 100 Fed. (2d) 915. The court below stated that the two cases here reviewed (Nos. 15, 16) "involved the identical facts, were consolidated for briefing and hearing and are disposed of in this opinion." We have followed the same course.

³ In re Messenger's Merchants Lunch Room, 85 Fed. (2d) 1002.

⁴ e. g., 11 U. S. C., § 93(j).

⁵ Cf. People v. Jersawit, 263 U. S. 493, 496.

"Any receiver, liquidator, referee, trustee, or other officers or agents appointed by any United States court who is authorized by said court to conduct any business, or who does conduct any business, shall, from and after June 18, 1934, be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation; . . ."

First. Subdivision 57(j) only prohibits allowance of a tax penalty against the bankrupt estate if incurred by the bankrupt before bankruptcy by reason of his own delinquency. After bankruptcy, it does not purport to exempt the trustee from the operation of State laws, or to relieve the estate from liability for the trustee's delinquencies.⁶ For 57(j) is a subdivision of Section 57 of the Bankruptcy Act governing "Proof and Allowance of Claims." And 57(a) makes clear that Section 57 as a whole relates only to claims "justly owing from the bankrupt to the creditor." The fees and penalties in issue were incurred by the trustee in operating the bankrupt business, and thus were not owed by the bankrupt to the State as a "creditor." Therefore, regardless of other rights the State might have, it could not file proof of claim for these fees and penalties as a creditor under Section 57. And neither the tax liability nor the penalties incurred by the trustee after bankruptcy are governed by this Section or its subdivisions. We must look elsewhere than to 57(j) to determine whether the court below correctly held that California may enforce its statutory penalties against this estate.

Second. The Act of June 18, 1934 declares that a trustee in bankruptcy conducting a business, as this trustee was, "shall . . . be subject to all State and local taxes applicable to such business the same as if such business were conducted by an individual or corporation. . . ." As originally offered, this Act applied only to receivers.⁷ Reported by the House Committee on the Judiciary without amendment,⁸ the bill was amended on the House floor to apply not only to receivers but to a "liquidator, referee, trustee or other officer or agent."⁹

We need not determine whether, without legislation such as the 1934 Act, the fact that a local business in bankruptcy is operated

⁶ Whether the trustee might be personally surcharged because his refusal to pay the fees subjected the estate to the increased liability of the penalties, is not presented.

⁷ Cong. Record, 73rd Cong., 2nd Sess., p. 4037.

⁸ *Id.*, p. 6067.

⁹ *Id.*, p. 6656.

by a bankruptcy trustee makes the business immune from State laws and valid measures for their enforcement. Clearly, means of permitting such immunity from local laws will not be read into the Bankruptcy Act. At any rate, Congress has here with vigor and clarity declared that a trustee and other court appointees who operate businesses must do so subject to State taxes "the same as if such business[es] were conducted by an individual or corporation." If businesses in California not conducted by a bankruptcy trustee are delinquent in the fees, they must pay the penalty. However, petitioner's contention would exempt a trustee operating a business in bankruptcy from this double tax liability which other delinquents must bear. A State would thus be accorded the theoretical privilege of taxing businesses operated by trustees in bankruptcy on an equal footing with all other businesses, but would be denied the traditional and almost universal method of enforcing prompt payment.

Taxation on and regulation of highway traffic are matters of constantly increasing importance and concern to the States. The Act of 1934 indicates a Congressional purpose to facilitate—not to obstruct—enforcement of State laws; the court below correctly recognized and applied this Congressional purpose and its judgment is

Affirmed.

Mr. Justice BUTLER took no part in the consideration or decision of this case.

A true copy.

Test:

♡

Clerk, Supreme Court, U. S.

MICRO CARD

TRADE

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